

**UNITED STATES DISTRICT COURT
District of Massachusetts**

Case Number 04-12485 RWZ

**Francis G. Falzarano
D/B/A North Hill Construction Co.
Plaintiff**

v.

**Medford Housing Authority
Director, John Greco**

DEFENDANTS' MOTION TO DISMISS COMPLAINT AND FOR COSTS

The Defendants Medford Housing Authority and Director, John Greco moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.
2. To dismiss the action on the grounds that the matter is res judicata having been heard on October 22, 2004 by the Peabody District Court in Essex County, Massachusetts with judgment for the defendant Medford Housing Authority and with no appeal taken or pending, all as set forth in decision of said Court on October 25, 2004, a copy of which Complaint and Decision is hereto annexed as Exhibit A-1 (Complaint) and Exhibit A-2 (Decision).
3. To dismiss the action for lack of jurisdiction over the subject matter under Rule 12 (b) for the following reasons: a) the Medford Housing Authority, which is a public body corporate and politic organized under Massachusetts General Laws Chapter 121B, is not an agency of the United States, and b) the Plaintiff is a resident of Lynnfield, Massachusetts, and c) the matter in controversy does not exceed \$75,000.00 exclusive of

interest and costs. The citizenship of the parties and the sum or value of the matter in controversy, by the Plaintiff's own allegations of citizenship under 28 U.S.C. § 1332, clearly negate the jurisdiction of the federal court in this matter. The Plaintiff, by alleging no diversity of citizenship and by alleging damages which cannot exceed \$19,000.00, has not alleged sufficient facts to comply with the necessary requirements to file or sustain a federal court complaint and jurisdiction on the basis of diversity of citizenship.

4. There is no claim or allegation in the Plaintiff's Complaint that the action arises under the Consitution, laws, or treaties of the United States, or that this action is against a foreign state.

WHEREFORE, the Defendant Medford Housing Authority hereby moves and request that this Court dismiss the Plaintiff's Complaint and, pursuant to 28 U.S.C. § 1332, impose costs and/or sanctions against the Plaintiff as allowed under said § 1332 for diversity of citizenship claims where the Plaintiff is adjudged to be entitled to recover less than \$75,000.00, as this action is initiated in bad faith since, on the face of said Complaint, recovery cannot reach the minimum recovery of \$75,000.00 required under the statute.

Date: December 23, 2004

Respectfully submitted
Medford Housing Authority
By its attorney:

John L. Greco
John L. Greco
c/o Medford Housing Authority
121 Riverside Avenue
Medford, MA 02155
Telephone No. 781-396-7200
BBO # 208460

STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL

Use Only: 0486 SC 0562

Filed 12/27/2004 Page 3 of 4
Trial Court of Massachusetts
Small Claims Session

PART 1	<input type="checkbox"/> BOSTON MUNICIPAL COURT	<input type="checkbox"/> DISTRICT COURT PEABODY	Division	<input type="checkbox"/> HOUSING COURT	Division
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PART 2	PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE NORTH HILL CONST. CO. 19 NORTH HILL DRIVE LYNNFIELD MA. 01940 PHONE NO: 781-334-6710	PLAINTIFF'S ATTORNEY (if any) Name: EXHIBIT A-1 Address: PHONE NO: BBO NO:
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PART 3	DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE MEDFORD HOUSING AUTHORITY JOHN GRECO DIRECTOR 121 RIVERSIDE AVE. MEDFORD MA. 02156 PHONE NO: 781-396-7200	ADDITIONAL DEFENDANT (if any) Name: Address: PHONE NO:
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PART 4	PLAINTIFF'S CLAIM. The defendant owes \$2000. plus \$40. court costs for the following reasons: Give the date of the event that is the basis of your claim. ON 1/23/04 PLAINTIFF GAVE \$19,000.00 CHECK TO DEFENDANT FOR SECURITY DEPOSIT ON CONSTRUCTION CONTRACT. CHECK WAS SUPPOSED TO BE FOR \$9,500.00. DEFENDANT HAS REFUSED TO THIS DATE TO RETURN THE \$9,500.00. I DEMAND 12% INTEREST AND TRIPLE DAMAGES EVEN IF THE CHECK IS RETURNED BEFORE THE COURT DATE SIGNATURE OF PLAINTIFF: [Signature] DATE: 5/13/04
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PART 5	MEDIATION: Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date. <input type="checkbox"/> The plaintiff is willing to attempt to settle this claim through court mediation.
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PART 6	MILITARY AFFIDAVIT: The plaintiff states under the pains and penalties of perjury that the: <input checked="" type="checkbox"/> above defendant(s) is (are) not serving in the military and at present live(s) or work(s) at the above address. <input type="checkbox"/> above defendant(s) is (are) serving in the military SIGNATURE OF PLAINTIFF: [Signature] DATE: 5/13/04
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NOTICE OF TRIAL	NOTICE TO DEFENDANT: You are being sued in Small Claims Court by the above named plaintiff. You are directed to appear for trial of this claim on the date and time noted to the right. If you wish to settle this claim before the trial date, you should contact the plaintiff or the plaintiff's attorney. SEE ADDITIONAL INSTRUCTIONS ON THE BACK OF THIS FORM	NAME AND ADDRESS OF COURT PEABODY DISTRICT COURT ONE LOWELL ST PEABODY MA 01960 DATE AND TIME OF TRIAL OCTOBER 22, 2004 9AM DATE AT TIME ROOM NO.	BOTH THE PLAINTIFF AND THE DEFENDANT MUST APPEAR AT THIS COURT ON THE DATE AND TIME SPECIFIED	COURT USE ONLY
	FIRST JUSTICE SANTO J RUMA	CLERK-MAGISTRATE OR DESIGNEE MARY COAN		

INSTRUCTIONS FOR FILING A SMALL CLAIM — You must complete Parts 1-6 of this form. See instructions on reverse.

JUDGMENT FOR DEFENDANT(S)DOCKET NUMBER
200486SC000562The Court of Massachusetts
District Court Department
Small Claims SessionCASE NAME **NORTH HILL CONSTRUCTION CO vs. MEDFORD HOUSING AUTHORITY AS OFFICER OF OR AGENT FOR JOHN GRECO**PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT
P01 NORTH HILL CONSTRUCTION COCURRENT COURT
Peabody District Court
One Lowell Street
P.O. Box 666
Peabody, MA 01960-0666
(978) 532-3100DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT
D01 MEDFORD HOUSING AUTHORITY as officer of or agent for JOHN G

ROOM/SESSION

←←←←←
WHEN
YOU
MUST
APPEAR
←←←←←

PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

D01 MEDFORD HOUSING AUTHORITY as officer of or agent for JOHN GRECO
121 RIVERSIDE AV
W MEDFORD, MA 02156*EXHIBIT A-2*

ATTORNEY FOR PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

JUDGMENT FOR DEFENDANT(S)

On the above claim, after trial by a magistrate, the Court has entered JUDGMENT IN FAVOR OF THE DEFENDANT(s) listed above. This means that the defendant(s) does not have to pay the plaintiff(s) any part of the claim or costs in this claim.

The plaintiff(s) does not have any right of appeal from this judgment. Uniform Small Claims Rule 8 provides that for good reason a plaintiff may file a motion within one year of this judgment, with notice to the defendant(s), requesting the Court to vacate or amend this judgment.

DATE JUDGMENT ENTERED
10/25/2004

CLERK-MAGISTRATE/ASST. CLERK

X*Ann C. Frazier**EXHIBIT A-2*